

REMARKS

In the Official Action of December 3, 2002, the Examiner rejected claims 2-4 and 10 as allegedly failing to meet 35 U.S.C. §112 for lack of antecedent basis for the phrase "supporting structure." In their August 7, 2002 Response to an earlier Official Action dated February 8, 2002, applicants removed the phrase "stationary supporting structure" from claim 1 and replaced that phrase with the phrase "piece of furniture." This prior amendment was for clarifying that the stationary supporting structure is a part of the piece of furniture. By removing the phrase "stationary supporting structure" from independent claim 1 in the August 7, 2002 Response, however, this caused dependent claims 2-4 and 10, which were left with the phrase "supporting structure", to lack antecedent basis. Claims 2 – 4 and 10 have now been amended to be consistent with the "piece of furniture" language previously inserted in claim 1 in lieu of the reference therein to "stationary supporting structure."

In the Official Action of December 3, 2002, the Examiner rejected claims 1 through 7 under 35 U.S.C. §102 as allegedly anticipated by U.S. Patent No. 4,786,107 to Crockett. Applicants respectfully submit that claims 1 through 7 are patentable. First, it has long been the law that to properly reject a claim under §102, each and every element in the claim must find a corresponding element in the cited reference. *Trintec Industries, Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1295 (Fed. Cir. 2002)(reversing district court for failing to insist on finding each

element of the claim in evaluating anticipation of a prior art reference under Section 102(a)).

Here, the Examiner has contended that claims 1 through 7 are anticipated by Crockett, yet each of these claims recites at least one element not found in Crockett explicitly or by implication. The absence from a prior art reference of even a single element, explicitly and inherently, is sufficient to make improper a rejection under Section 102(b) based on that reference. Perhaps the best example of a missing element in each of these claims, and one whose absence from Crockett is significant since this element goes to a main part of the instant disclosure, is found by examining the element "a component."

The present invention is directed to an adjusting device that adjusts "a component" of a piece of furniture. The specification discloses two example embodiments where the component is (1) a movable head and back support structure (see, e.g., FIGS. 4, 5 and 8) in one case; and (2) a movable footrest (see, e.g., FIGS. 10 – 12) in another case. All of claims 1 through 7 include the element of *a component of a piece of furniture* that is adjusted by the adjusting device. In Crockett, in clear contrast, the entire piece of furniture is being lifted. Crockett recognizes a distinction between its lifting apparatus 20 and a seating structure 22 such as a house chair, recliner, sofa, etc. See column 2, lines 17 – 20. In Crockett, there is no disclosure of *a component* of a piece of furniture being moved back and forth between two end positions. Crockett is directed, as

its very title states, to a lifting apparatus for a seating structure. FIG. 2 of Crockett shows an embodiment of the "lifting apparatus" of that invention, and it is apparent that said lifting apparatus is not meant to move a component (i.e., a portion) of a piece of furniture between two end positions. There is no teaching in Crockett of a device to move a particular component of the furniture; rather, the entire chair or other seating structure is moved up and let down by the "lifting apparatus." Thus, for these reasons, it is respectfully submitted that the Crockett reference does not anticipate claims 1 through 7 hereof.

The Examiner has rejected claim 1 (but not claims 2 through 7) on another ground. The Examiner contends that claims 1 and 8 – 11 are anticipated under 35 U.S.C. §102(b) by U.S. Patent No. 5,730,494 to LaPointe et al. Applicants respectfully traverse the rejection. Claims 2 through 7 are patentable based on the amendments and Remarks concerning Crockett since these claims were rejected on this reference alone. Claim 1 is not anticipated under Section 102(b) by U.S. Patent No. 5,730,494 to LaPointe et al. either, however.

The Examiner contends that LaPointe discloses *inter alia* "a rotary drive mechanism 136." The Examiner is construing the rotary drive mechanism element of the present claims very broadly, apparently to include the use of a linear shaft 129 (see FIG 2A of LaPointe) and a leg rest follower assembly (see FIG. 8 of LaPointe). Given this broad construction of "rotary drive mechanism," element 136 of LaPointe, the alleged rotary drive mechanism cited the Examiner,

is referenced in the specification as being just the "leg rest follower assembly." This specific element (item 136, as disclosed in LaPointe) does not, by itself, provide power to drive a component of furniture. See column 14, lines 14 -16 of LaPointe. The specification and claims of the present application make it clear that the "rotary drive mechanism" as used herein includes a motor and an output member. See, e.g., Paragraph 30 of the instant application, lines 11 – 14. Thus, the cited portion of LaPointe clearly does not anticipate claim 1.

In the May 1, 2003 interview, the Examiners suggested that applicants could distinguish the Crockett and LaPointe references that were independently relied upon by Examiner Stefanon in making final the rejection of claim 1 in the December 3, 2002 Official Action by emphasizing that the claimed invention calls for a connection between the rotary drive mechanism and the crossbar. Currently amended claim 1 contains an amendment that makes it clear that the rotary drive mechanism includes an output member that imparts a rotational motion to a crossbar to move the component of a piece of furniture. Thus, it is respectfully submitted that applicants have further distinguished the specific structure disclosed in LaPointe.

Claim 4 has been amended simply to clarify the invention, and it is submitted that the amendment effects no material change in that claim's scope.

Since all of claims 1 through 13 are patentable if claim 1 is patentable, and claim 1 is patentable over Crockett and LaPointe individually, applicants respectfully submit that the Examiner should allow claims 1 through 13.

Claims 1 through 13 are also patentable over the new prior art submitted concurrently herewith. This prior art is being submitted at this time since the undersigned counsel is new to the prosecution of this application and has become aware of these references.

New claims 14 through 17 submitted herewith are addressed to motion furniture, as was discussed at the May 1, 2003 interview. These claims also incorporate the concepts suggested by the Examiners during the interview. These claims are patentable over the previously cited prior art, as well as the prior art listed on the Third Information Disclosure Statement submitted concurrently herewith. It is specifically contemplated that these new claims envision a wide variety of structures that will be understood to the artisan as providing for the direct rotation of the crossbar by the rotary drive mechanism, including as examples but without limitation: a snug-fit between the output member of the rotary drive mechanism and the crossbar as described in Paragraph 13 of this application; a bracketed connection between the crossbar and the drive assembly, as shown for example in FIG. 8 of U.S. Published Patent Application US2001/0028183 A1 (FIG. 8 being part of the new matter in that

continuation in part application and therefore not being part of the prior art due to the May 7, 2001 filing date of that application); and other similar designs.

Applicants respectfully request that the Examiner review the newly cited prior art, and the prior art submitted on November 26, 2002 with the Second Information Disclosure Statement, that the Forms PTO-1449 from the Second and Third Information Disclosure Statements be initialed and returned to the undersigned, and that claims 1 through 17 of the present application be allowed.

Respectfully submitted,



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